

1 THE HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 STEPHANIE WILSON, )  
11 v. ) Plaintiff, ) No. 3:12-cv-05209-RBL  
12 DISCOVER BANK, ) )  
13 Defendant. ) )  
14 DISCOVER BANK, ) )  
15 Counterclaim Plaintiff, ) )  
16 v. ) )  
17 STEPHANIE WILSON, ) )  
18 Counterclaim Defendant. ) )  
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DISCOVER BANK'S ANSWER AND  
AFFIRMATIVE DEFENSES AND  
COUNTERCLAIM TO PLAINTIFF'S  
COMPLAINT FOR VIOLATION OF  
FEDERAL TELEPHONE  
CONSUMER PROTECTION ACT

20 Discover Bank ("Discover") hereby submits this Answer and Affirmative Defenses and  
21 Counterclaim (the "Answer") to Plaintiff's Complaint for Violation of Federal Telephone  
22 Consumer Protection Act (the "Complaint").

23 **NATURE OF ACTION**

24 1. Answering paragraph 1, no response is required in that paragraph 1 pleads  
25 conclusions of law and not allegations of fact. Notwithstanding this, Discover denies each and  
26 every allegation contained in paragraph 1 and all inferences to be drawn therefrom.

## JURISDICTION

2. Answering paragraph 2, Discover admits that this United States District Court for the Western District of Washington at Tacoma has jurisdiction over this action. With respect to any remaining allegations contained in paragraph 2, Discover denies the same and all inferences to be drawn therefrom.

## PARTIES

3. Answering paragraph 3, Discover admits the allegations therein.

4. Answering paragraph 4, Discover admits that Plaintiff owes a debt to Discover.

9 With respect to the remaining allegations contained in paragraph 4, Discover denies the same  
10 and all inferences to be drawn therefrom.

## **FACTUAL ALLEGATIONS**

5. Answering paragraph 5, Discover denies each and every allegation contained therein and all inferences to be drawn therefrom.

6. Answering paragraph 6, Discover denies each and every allegation contained therein and all inferences to be drawn therefrom.

## COUNT I

## **VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)**

7. Answering paragraph 7, Discover re-alleges and incorporates by reference each and every response contained in paragraphs 1 through 6 of Discover's Answer.

8. Answering paragraph 8, Discover denies each and every allegation contained therein and all inferences to be drawn therefrom.

## **PRAYER FOR RELIEF**

In answering paragraphs (a)-(f) of the Prayer for Relief contained in Plaintiff's Complaint, Discover denies each and every allegation contained therein and all inferences to be drawn therefrom. Discover specifically denies that it is liable to Plaintiff for any damages whatsoever. Discover specifically denies that Plaintiff is entitled to any damages whatsoever.

## AFFIRMATIVE DEFENSES

Discover asserts the following affirmative defenses:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
  2. Plaintiff's claims are barred under the doctrine of waiver, estoppel, consent and/or unclean hands.
  3. Plaintiff consented to being contacted via automatic telephone calls by the Defendant and the Defendant's representatives.
  4. Plaintiff's claims are barred by the applicable statute of limitations.
  5. The messages allegedly sent to Plaintiff were permitted.
  6. Plaintiff lacks standing to maintain the instant cause of action.
  7. Plaintiff has no private right of action to seek all or some of the relief sought in the Complaint.
  8. Defendant denies that Plaintiff suffered any injury to business or property but to the extent the Plaintiff claims to have suffered damage, Plaintiff failed to mitigate her damages, if any.
  9. Plaintiff failed to allege that she suffered any damages.
  10. Plaintiff is not entitled to the damages she seeks to recover in this action.
  11. Defendant reserves the right to arbitrate Plaintiff's claim pursuant to the contractual agreement between Plaintiff and Defendant.
  12. Defendant asserts an affirmative defense that it intends to rely upon such defenses as may become legally available hereunder or become apparent during discovery, including without limitation those defenses specific to the statutory law and common law of the State of Washington and the United States of America which were available at the time the action was commenced or became available during the pendency of this proceeding and thereby reserves the right to amend its answer to assert any such defenses.

## COUNTERCLAIM

By way of Counterclaim, Discover alleges as follows against Stephanie Wilson, an

1 individual.

2 **PARTIES**

3 1. Counterclaim Plaintiff Discover Bank is an FDIC Delaware-insured Delaware  
4 state bank. Discover does business in the State of Washington.

5 2. Upon information and belief, Counterclaim Defendant Stephanie Wilson is a  
6 resident of Clallam County.

7 **JURISDICTION**

8 3. This is an action for breach of contract relating to an agreement that was entered  
9 into in Clallam County, Washington. Jurisdiction and venue are appropriate in this United  
10 States District Court, Western District of Washington at Tacoma.

11 4. This Court has jurisdiction over the subject matter of this action pursuant to 28  
12 U.S.C. § 1441 and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. §  
13 1391.

14 **FACTUAL ALLEGATIONS**

15 5. Wilson applied for a credit card with Discover in October of 2008. She  
16 subsequently entered into a Card Member Agreement with Discover in or around late October  
17 of 2008.

18 6. The Card Member Agreement was amended in May of 2009 and again in  
19 January of 2010. The Card Member Agreement, as amended, is referred to herein as the  
20 “CMA.” Wilson is bound by the terms of the CMA.

21 7. Pursuant to the CMA, Wilson agreed not to allow her unpaid balance, including  
22 finance charges and fees, to exceed her account credit line.

23 8. Pursuant to the CMA, Wilson agreed to pay for all purchases, cash advances and  
24 balance transfers including applicable finance charges and other charges or fees incurred.

25 9. Wilson defaulted on the CMA by failing to pay on her account as required by  
26 the CMA. Wilson failed to pay \$4,034.34 that is due and owing to Discover. Therefore,  
27 Wilson’s breach of the CMA caused Discover to incur \$4,034.34 in damages.

10. Pursuant to the CMA, Discover is entitled to recover its reasonable attorneys' fees and court costs incurred in connection with its claim against Wilson.

#### **CAUSE OF ACTION – BREACH OF CONTRACT**

11. Discover realleges and incorporates by reference its allegations made in paragraphs 5-10.

12. Wilson entered into the CMA with Discover in October of 2008, and Wilson subsequently breached the CMA by failing to make payments to Discover as required by the CMA.

13. Discover has fulfilled all of its obligations under the CMA.

14. Wilson's breach of contract caused Discover to incur damages in the amount of \$4,034.34 that Wilson failed to pay, as well as the attorneys' fees and litigation costs incurred in bringing this claim against Wilson.

15. Discover is entitled to damages in the amount of \$4,034.34 plus reasonable attorneys' fees and costs.

16. Discover reserves the right to arbitrate its breach of contract claim against Wilson pursuant to the express terms of the CMA.

## **PRAYER FOR RELIEF**

WHEREFORE, having answered the Complaint filed by Plaintiff and having asserted its affirmative defenses and counterclaim, Discover prays for relief as follows:

1. That the Complaint filed by Plaintiff be dismissed with prejudice;

2. That Discover be awarded costs, prejudgment interest and attorneys' fees against Plaintiff; and

3. That an award against Counterclaim Plaintiff Wilson be granted for the total amount of damages that Discover suffered as a result of Wilson's breach of contract as well as any other relief that the Court deems proper.

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1 DATED: March 22, 2012

2 LANE POWELL PC

3

4 By s/Grant S. Degginger  
5 Grant S. Degginger, WSBA No. 15261  
deggingerg@lanepowell.com

6 s/Erin M. Wilson  
7 Erin M. Wilson, WSBA No. 42454  
wilsonem@lanepowell.com

8 Attorneys for Defendant Discover Bank

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ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM - 6  
NO. 3:12-CV-05209-RBL  
118144.0039/5333104.1

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4100  
SEATTLE, WASHINGTON 98101-2338  
206.223.7000 FAX: 206.223.7107

## **DECLARATION OF SERVICE**

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 22nd day of March, 2012, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

Dennis R. Kurz  
Weisberg & Meyers LLC  
5025 N. Central Ave. #602  
Phoenix, AZ 85012  
Email: [DKurz@AttorneysForConsumers.com](mailto:DKurz@AttorneysForConsumers.com)

- by CM/ECF
  - by Electronic Mail
  - by Facsimile Transmission
  - by First Class Mail
  - by Hand Delivery
  - by Overnight Delivery

DATED this 22<sup>nd</sup> day of March, 2012 at Seattle, Washington.

Janet Wiley  
Declarant

Declarant